

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219529.2

DATE: October 11, 1985

MATTER OF: Endure-A-Lifetime Products, Inc.

DIGEST:

1. Protester's quotation is properly found unacceptable where description in Federal Supply Schedule catalog shows that the product offered by the protester does not conform to the salient characteristics of the brand name product specified in the request for quotations (RFQ) and the protester fails to demonstrate through descriptive literature or otherwise that its product conforms to the RFQ specifications.
2. Protester is not an interested party entitled under the Competition in Contracting Act and General Accounting Office Bid Protest Regulations to protest issuance of a delivery order to a firm which the protester contends offered a product which does not conform to the RFQ specifications, since, even if its protest were sustained, the protester itself offered a nonconforming product and therefore would not be eligible to receive the delivery order, and there would be no basis for soliciting new quotations.

Endure-A-Lifetime Products, Inc. (EAL) protests the Navy's decision to place a delivery order for a modular-in-plant enclosure with National Partitions and Interiors, Inc., pursuant to request for quotations (RFQ) No. N68836-85-Q-0148, issued by the Naval Supply Center, Jacksonville, Florida. The protester contends that (1) the Navy improperly determined that EAL's product is not equivalent to the brand name product specified in the RFQ; and (2) National Partitions' quotation was not in conformance with the RFQ requirements. We find that EAL's quotation was properly rejected and therefore EAL is not an interested party for purposes of protesting the agency's acceptance of the National Partitions quotation. We deny the protest in part and dismiss it in part.

033438

The RFQ described the product to be purchased as a modular-in-plant enclosure, National Enclosure model TS3088 or equal. The Navy received quotations from 10 of the 21 sources solicited. The five lowest priced quotations, which included the protester's and National Partitions', then were evaluated by the Navy for conformance to the specifications in the RFQ. Only two quotations, including National Partitions', were found acceptable. The Navy then issued a delivery order in the amount of \$13,549.35 to National Partitions, which had offered the lower price of the two acceptable quotations. EAL offered a lower price than did the awardee.

The product offered by EAL, a Mod-U-Bilt model 384 manufactured by EAL, was found not to conform to three salient characteristics in the RFQ. Specifically, the EAL model featured an air conditioner which did not meet the specified British Thermal Unit (BTU) rating, and contained fewer than the required number of light fixtures and duplex receptacles.

The RFQ advised that the government's determination of the acceptability of a product offered as an equal to the specified brand name model would be based on information furnished by the firm submitting the quotation as well as other information reasonably available to the purchasing activity. According to the Navy, the protester did not submit any descriptive literature^{1/}, but its quotation did identify the Federal Supply Schedule (FSS) contract under which it offered the model it was proposing. The Navy's assessment of the EAL model's technical features therefore was based on the description in the FSS catalog, which shows that the EAL model does not conform to the specifications in the RFQ in the three areas identified by the Navy. First, the EAL model offered an air conditioner with an 11,400 BTU rating, not the 13,000 BTU rating called for in the RFQ. In addition, the EAL model offered 10 light fixtures instead of the 16 specified, and 12 duplex receptacles instead of the 22 specified.

^{1/}In commenting on the Navy's report, the protester stated that it had submitted "all required literature" along with its quotation. Beyond this bare statement, however, the protester has not shown that any descriptive literature was submitted with its quotation, and did not furnish a copy of its descriptive literature to our Office. As a result, we see no basis to challenge the Navy's statement that EAL's quotation included no descriptive literature.

The protester maintains that its model met the RFQ requirements by offering 8 light fixtures^{2/} and 12 duplex receptacles per floor of the two-story enclosure, for a total of 16 light fixtures and 24 receptacles. EAL has not offered any descriptive literature or other evidence to support its position, however, and, in our view, the only reasonable interpretation of the FSS catalog description is that the EAL model contained a total of 10 light fixtures and 12 receptacles for the entire two-story structure, not per floor. The FSS catalog lists the prices and quantities of fixtures and receptacles as part of the "electric package" for the model as a whole; there is no indication that they are listed per floor or that two electric packages must be ordered for the two-story model offered. Moreover, the catalog shows that the air conditioner included in the EAL model has a BTU rating of 11,400, and the protester offers no evidence to the contrary, other than its bare statement that its model offered a 13,000 BTU air conditioner as required by the RFQ specifications.

The protester has offered no evidence to support its position that its quotation offered a model conforming to all the RFQ specifications. As a result, we find that the protester has not met its burden of establishing that the agency should have found that its product complies with all the salient characteristics in the RFQ. See Bai Lar of California, B-213504, June 25, 1984, 84-1 CPD ¶ 663. Since the EAL model did not conform to the salient characteristics in the RFQ, EAL's quotation was properly found unacceptable. See Le Prix Electrical Distributors, Ltd., B-212518, Dec. 27, 1983, 84-1 CPD ¶ 26. We therefore deny EAL's protest of the Navy's rejection of its quotation.

Based on its failure to offer a conforming model, we find that EAL is not an interested party entitled to protest issuance of the delivery order to National Partitions. To be considered an interested party so as to have standing to protest under the Competition in Contracting Act of 1984 and our implementing regulations, a party must be an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the contract involved. See 31 U.S.C.A. §§ 3551 et seq. (West Supp. 1985); Bid Protest Regulations, 4 C.F.R. §§ 21.0(a),

^{2/}The FSS catalog shows 10 light fixtures for the EAL model, not 8, as the protester contends.

21.1(a) (1985). In this case, EAL would not be eligible to receive the delivery order even if its protest were sustained, since EAL offered a nonconforming model. In addition, even if the National Partitions model were also unacceptable, as the protester contends, the delivery order still could be placed with the other firm which submitted a quotation for an acceptable model; sustaining the protest thus would not call for reissuance of the RFQ or the opportunity for EAL to submit a new quotation. Moreover, unlike cases where the alleged defects in the protester's and the awardee's bids are the same, the grounds on which EAL's quotation was found unacceptable are different from the defects EAL alleges in the awardee's quotation. See Dillingham Ship Repair, B-218653, Aug. 14, 1985, 85-2 CPD ¶ 167. As a result, we find that EAL lacks the direct economic interest necessary to make it an interested party in this case. See Baker Co., Inc., B-216220, Mar. 1, 1985, 85-1 CPD ¶ 254.

The protest is denied in part and dismissed in part.

for *Seymour E. Van*
Harry R. Van Cleve
General Counsel